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14 John Quirk

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

CV13- 4343 JLG

Case No.:

John Quirk,

Plaintiff,

vs.

Performant Recovery, Inc.; and DOES 1-
10, inclusive,

Defendants.

COMPLAINT FOR DAMAGES
1. VIOLATION OF FAIR DEBT
COLLECTION PRACTICES ACT,
15 U.S.C. § 1692 ET. SEQ;
2. VIOLATION OF FAIR DEBT
COLLECTION PRACTICES ACT,
CAL.CIV.CODE § 1788 ET. SEQ.

JURY TRIAL DEMANDED

COMPLAINT FOR DAMAGES

CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

FILED
13 JUN 17 PM 3:21

1 For this Complaint, the Plaintiff, John Quirk, by undersigned counsel, states as
2 follows:
3

4 **JURISDICTION**

5 1. This action arises out of Defendants' repeated violations of the Fair Debt
6 Collection Practices Act, 15 U.S.C. § 1692, *et seq.* ("FDCPA"), and the invasions of
7 Plaintiff's personal privacy by the Defendants and its agents in their illegal efforts to
8 collect a consumer debt.

9
10 2. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1337.

11 3. Venue is proper in this District pursuant to 28 U.S.C. § 1331(b), in that
12 Defendants transact business here and a substantial portion of the acts giving rise to
13 this action occurred here.

14
15 **PARTIES**

16 4. The Plaintiff, John Quirk (hereafter "Plaintiff"), is an adult individual
17 residing in Clermont, Florida, and is a "consumer" as the term is defined by 15 U.S.C.
18 § 1692a(3).
19

20 5. Defendant, Performant Recovery, Inc. ("Performant"), is a California
21 business entity with an address of 333 North Canyons Parkway, Suite 100, Livermore,
22 California 94551, operating as a collection agency, and is a "debt collector" as the
23 term is defined by 15 U.S.C. § 1692a(6).
24
25

6. Does 1-10 (the “Collectors”) are individual collectors employed by Performant and whose identities are currently unknown to the Plaintiff. One or more of the Collectors may be joined as parties once their identities are disclosed through discovery.

7. Performant at all times acted by and through one or more of the Collectors.

ALLEGATIONS APPLICABLE TO ALL COUNTS

A. The Debt

8. The Plaintiff allegedly incurred a financial obligation in the approximate amount of \$47,000.00 (the “Debt”) to an original creditor (the “Creditor”) for a federal student loan.

9. The Debt arose from services provided by the Creditor which were primarily for family, personal or household purposes and which meets the definition of a “debt” under 15 U.S.C. § 1692a(5).

10. The Debt was purchased, assigned or transferred to Performant for collection, or Performant was employed by the Creditor to collect the Debt.

11. The Defendants attempted to collect the Debt and, as such, engaged in “communications” as defined in 15 U.S.C. § 1692a(2).

1 **B. Performant Engages in Harassment and Abusive Tactics**

2 12. Within the last year, Performant contacted Plaintiff in an attempt to
3 collect the Debt.

5 13. During a conversation in or around February of 2013, Performant
6 threatened to begin garnishing Plaintiff's wages if the Debt was not paid immediately.
7 Performant advised Plaintiff that its "Administrative Wage Garnishment" had been
8 "approved," and that an immediate payment must be received in order to avoid the
9 garnishment.

10 14. Again, in a conversation in May of 2013, Performant again threatened to
11 begin an immediate wage garnishment unless Plaintiff paid the sum of \$750 by May
12 24th.

13 15. As of the date of the filing of this complaint, Plaintiff has not received a
14 Notice of Intent to Garnish in accordance with 20 USC §1095 advising him of his
15 rights.

16 16. No administrative wage garnishment can commence prior to Plaintiff
17 receiving said Notice, and as such Performant had and has no legal authority to
18 institute the wage garnishment as threatened.

19 17. Plaintiff informed Performant that he was experiencing financial hardship
20 and offered to make \$100.00 monthly payments in an effort to cease collection
21 activity.

18. Performant refused Plaintiff's offer and demanded a down payment of \$750.00 followed by monthly payments of \$355.00. Performant failed to advise Plaintiff of his ability to enter into an Income Based Rehabilitation program that is available through the Department of Education, and instead threatened Plaintiff with immediate garnishment unless the demanded payments were made.

19. Plaintiff advised Performant that he was unable to repay the Debt in the manner demanded by Performant and stated that \$100.00 per month was all he could afford at that time. Performant advised Plaintiff that his account would be marked as a “refusal to pay,” and promised that the wage garnishment would immediately commence.

20. Performant called Plaintiff's place of employment in an attempt to collect the Debt and left a message for Plaintiff with a secretary disclosing the nature of the call.

COUNT I
VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT
15 U.S.C. § 1692, et seq.

21. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

22. The Defendants communicated with individuals other than the Plaintiff, the Plaintiff's attorney, or a credit bureau, in violation of 15 U.S.C. § 1692c(b).

5 24. The Defendants used false, deceptive, or misleading representation or
6 means in connection with the collection of a debt, in violation of 15 U.S.C. § 1692e.

8 25. The Defendants threatened the Plaintiff with garnishment if the debt was
9 not paid, in violation of 15 U.S.C. § 1692e(4).

10 26. The Defendants used unfair and unconscionable means to collect a debt,
11 in violation of 15 U.S.C. § 1692f.
12

13 27. The foregoing acts and omissions of the Defendants constitute numerous
14 and multiple violations of the FDCPA, including every one of the above-cited
15 provisions.
16

17 28. The Plaintiff is entitled to damages as a result of the Defendants'
18 violations.
19

COUNT II
**VIOLATION OF THE ROSENTHAL FAIR DEBT COLLECTION
PRACTICES ACT, Cal. Civ. Code § 1788 et seq.**

1 30. The Rosenthal Fair Debt Collection Practices Act, California Civil Code
2 section 1788 *et seq.* (“Rosenthal Act”) prohibits unfair and deceptive acts and
3 practices in the collection of consumer debts.

5 31. Performant Recovery, Inc., in the regular course of business, engages in
6 debt collection and is a “debt collector” as defined by Cal. Civ. Code § 1788.2(c).
7

8 32. The Defendants threatened the Plaintiff with garnishment or attachment
9 of his wages if the debt was not paid, without intending to institute such proceedings,
10 in violation of Cal. Civ. Code § 1788.10(e).
11

12 33. The Defendants failed to comply with the provisions of 15 U.S.C. §
13 1692, et seq., in violation of Cal. Civ. Code § 1788.13(e).
14

15 34. The Defendants communicated with the Plaintiff’s employer about the
16 Plaintiff’s debt, without consent of the Plaintiff’s attorney or the Plaintiff, and without
17 the purpose of verifying location or employment information, in violation of Cal. Civ.
18 Code § 1788.12(a).
19

20 35. The Defendants did not comply with the provisions of Title 15, Section
21 1692 of the United States Code, in violation of Cal. Civ. Code § 1788.17.
22

23 36. The Plaintiff is entitled to damages as a result of the Defendants’
24 violations.
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PRAAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that judgment be entered against the Defendants:

- A. Actual damages pursuant to 15 U.S.C. § 1692k(a)(1) against the Defendants;
- B. Statutory damages of \$1,000.00 pursuant to 15 U.S.C. §1692k(a)(2)(A) against the Defendants;
- C. Costs of litigation and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k(a)(3) against the Defendants;
- D. Actual damages pursuant to Cal. Civ. Code § 1788.30(a);
- E. Statutory damages of \$1,000.00 for knowingly and willfully committing violations pursuant to Cal. Civ. Code § 1788.30(b);
- F. Actual damages from the Defendants for the all damages including emotional distress suffered as a result of the intentional, reckless, and/or negligent FDCPA violations and intentional, reckless, and/or negligent invasions of privacy and intentional infliction of emotional distress in an amount to be determined at trial for the Plaintiff;
- G. Punitive damages; and
- H. Such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

DATED: June 11, 2013

TAMMY HUSSIN

By: _____
Tammy Hussin, Esq.
Lemberg & Associates, LLC
Attorney for Plaintiff, John Quirk

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>)		DEFENDANTS				
John Quirk		Performant Recovery, Inc.				
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Tammy Hussin, 6404 Merlin Drive, Carlsbad, CA 92011 855-301-2300 X 5514 Lemberg & Associates, 1100 Summer St 3rd Fl Stamford CT 06905 2036532250		Attorneys (If Known)				
II. BASIS OF JURISDICTION (Place an X in one box only.)		III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.)				
<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	Citizen of This State	PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1 Incorporated or Principal Place of Business in this State <input type="checkbox"/> 4 <input type="checkbox"/> 4			
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	Citizen of Another State	PTF <input type="checkbox"/> 2 DEF <input type="checkbox"/> 2 Incorporated and Principal Place of Business in Another State <input type="checkbox"/> 5 <input type="checkbox"/> 5			
		Citizen or Subject of a Foreign Country	PTF <input type="checkbox"/> 3 DEF <input type="checkbox"/> 3 Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/> 6			
IV. ORIGIN (Place an X in one box only.)						
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify):	<input type="checkbox"/> 6 Multi-District Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge
V. REQUESTED IN COMPLAINT: <input type="checkbox"/> JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (Check 'Yes' only if demanded in complaint.)				<input checked="" type="checkbox"/> MONEY DEMANDED IN COMPLAINT: \$ Damages, fees, costs		
CLASS ACTION under F.R.C.P. 23: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No						
VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.) 15 U.S.C. 1692 - Violations of the Fair Debt Collection Practices Act						
VII. NATURE OF SUIT (Place an X in one box only.)						
<input checked="" type="checkbox"/> OTHER STATUTES	<input type="checkbox"/> CONTRACT	<input type="checkbox"/> TORTS	<input type="checkbox"/> TORTS	<input type="checkbox"/> PRISONER	<input type="checkbox"/> LABOR	
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> PERSONAL PROPERTY	<input type="checkbox"/> PETITIONS	<input type="checkbox"/> 710 Fair Labor Standards Act	
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 720 Labor/Mgmt. Relations	
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 530 General	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	
<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 740 Railway Labor Act	
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 540 Mandamus/ Other	<input type="checkbox"/> 790 Other Labor Litigation	
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 390 Motor Vehicle Product Liability	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	
<input checked="" type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> PROPERTY RIGHTS	
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 820 Copyrights	
<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 428 CIVIL RIGHTS	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 830 Patent	
<input type="checkbox"/> 850 Securities/Commodities/ Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 840 Trademark	
<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 850 SOCIAL SECURITY		
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 861 HIA (1395F)		
<input type="checkbox"/> 891 Agricultural Act	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 862 Black Lung (923)		
<input type="checkbox"/> 892 Economic Stabilization Act	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 446 IMMIGRATION	<input type="checkbox"/> 445 American with Disabilities - Employment	<input type="checkbox"/> 863 DIWC/DIWW (405(g))		
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 446 American with Disabilities - Other	<input type="checkbox"/> 864 SSID Title XVI		
<input type="checkbox"/> 894 Energy Allocation Act	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 463 Habeas Corpus-Alien Detainee	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 865 RSI (405(g))		
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 870 FEDERAL TAX SUITS		
<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	<input type="checkbox"/> 290 All Other Real Property			<input type="checkbox"/> 871 Taxes (U.S. Plaintiff or Defendant)		
<input type="checkbox"/> 950 Constitutionality of State Statutes				<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609		

CV13- 4343

FOR OFFICE USE ONLY: Case Number:

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes
If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes
If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

(Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	State of Florida

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
County of Los Angeles	

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
County of Los Angeles	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PTER): _____

Date June 11, 2013

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))